

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

ADAM CHASTEEN,

Petitioner,

-vs-

WARDEN, Madison Correctional
Institution,

Respondent.

:

Case No. 1:10-cv-804

:

District Judge S. Arthur Spiegel
Magistrate Judge Michael R. Merz

**DECISION AND ORDER FINDING MOTIONS TO APPEAL *IN FORMA PAUPERIS*
AND FOR CERTIFICATE OF APPEALABILITY TO BE MOOT**

This habeas corpus case is before the Court on Petitioner's Motion for Leave to Appeal *in forma pauperis* (Doc. No. 63) and Application for Certificate of Appealability (Doc. No. 65).

The first of these Motions in fact establishes that Petitioner is indigent and cannot afford the appellate filing fee of \$455.00. However, District Judge Spiegel, in adopting the Magistrate Judge's Report and Recommendations in this case, certified that "any appeal of this order will not be taken in good faith, and therefore DENIES Petitioner leave to appeal *in forma pauperis* upon a showing of financial necessity. See Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997)" (Order, Doc. No. 60, PageID 868). Petitioner has not offered any argument as to why that decision should be reconsidered. Since Judge Spiegel has already denied leave to appeal *in forma pauperis*, the instant Motion is moot. Petitioner must apply to the Court of Appeals for leave to proceed *in forma pauperis*.

Petitioner also seeks a certificate of appealability on all seven grounds for relief pled in his Petitioner. Such a certificate is required in order for him to appeal the denial of his Petition for Writ of Habeas Corpus. As required by Habeas Rule 11, District Judge Spiegel considered in his final order the question whether a certificate of appealability should issue and found that it should not (Order, Doc. No. 60, PageID 868.) Petitioner has offered no argument as to why that conclusion should be reconsidered. Indeed, his Application is largely a recitation of the standard for a certificate of appealability with a conclusory statement that each of his Grounds for Relief meets that standard. Accordingly, the Application is moot. Petitioner must apply to the Sixth Circuit Court of Appeals for a certificate of appealability.

April 27, 2012.

s/ **Michael R. Merz**
United States Magistrate Judge